



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on September 4, 2013, which was received by the landlord on September 9, 2013, a Canada post tracking number was provided as evidence of service, the landlord did not appear. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?
Is the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

The tenant paid a security deposit of \$475.00 at the start of the tenancy which began September 2008. The tenancy ended July 31, 2013. The tenant stated a move-in condition inspection report was completed, however, he was told by the landlord that the paper work had been lost.

The tenant stated that the landlord was provided with his written forwarding address on July 15, 2013, in person. The tenant stated that he was told by the landlord that there was an unwritten policy not to return the tenants' security deposits.

The tenant stated that he was told by the landlord that since he had been a good tenant throughout his tenancy that there should not be any problems with returning his security deposit.

The tenant stated that after the tenancy ended that he received a letter from the landlord stating that they were not going to return the security deposit as they claimed he had not participated in a move-out inspection.

The tenant stated that allegation is false as he asked the landlord if they were going to complete a move-out inspection and the landlord responded that they would, however, a move-out inspection was never scheduled. The tenant stated at the end of the tenancy he returned the keys in person to the landlord and there was no mention of scheduling or completing the move-out condition inspection.

The tenant stated he did not authorize the landlord to retain any portion.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

The evidence of the tenant was the landlord had received his forwarding address on July 15, 2013, in person. The evidence of the tenant was that he was informed by the landlord that they have an unwritten policy to retain the tenants' security deposits. The evidence of the tenant was that the landlord sent him a letter after the tenancy ended alleging that he had failed to attend the move-out condition inspection and that they would not be returning the security deposit.

The evidence of the tenant was that he asked if a move-out inspection was going to be completed prior to vacating the rental premise and when he returned the keys in person to the landlord there was no mention of completing or scheduling a move-out condition inspection.

In this case the landlord was served with the tenant's application for dispute resolution seeking the return of the security deposit, I find if the landlord's position of extinguishment had merit it would have been reasonable for the landlord to attend the

hearing and make submission to support their position and present documentary evidence.

As a result, I accept the tenant's undisputed testimony that there was no scheduled move-out condition inspection arranged prior to the tenancy ending or when they returned the keys in person to the landlord at the end of tenancy.

By failing to perform an outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to section 36(2) of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest. There was no evidence that the landlord filed an application for dispute resolution within 15 day of the tenancy ending.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$1,004.75, comprised of double the security deposit (\$475.00) on the original amount held, the interest (\$4.75), and the \$50.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with

this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenant is granted a monetary order in the above amount.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2013

Residential Tenancy Branch

